

***United States Court of Appeals  
for the Second Circuit***

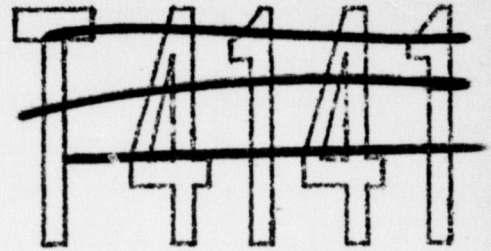


**APPELLANT'S  
APPENDIX**





IN THE  
UNITED STATES COURT OF APPEALS  
For The Second Circuit



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UNITED STATES OF AMERICA,  
Plaintiff - Appellee

B  
PMS  
75-1068

VS

MOZELLE WILLIAMS,  
Defendant - Appellant

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Appeal From The United States District  
Court For The Eastern District of New York  
Honorable Edward R. Neaher, Presiding Judge

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APPELLANT'S APPENDIX

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APPENDIX

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MEMORANDUM OF DECISION

Defendant is charged under 21 U.S.C. Sec. 841(a) (1) with having, on or about September 21, 1971, knowingly and intentionally possessed with intent to distribute approximately two hundred fifty grams of heroin. The heroin had been found in an airline flight bag he was carrying as he attempted to board a flight at La Guardia Airport on September 24, 1971.

On May 29, 1974 the court commenced the trial of this case with a suppression hearing, since defendant challenged the legality of the search. After hearing the testimony of two witnesses, Allen R. Huttick, formerly Deputy United States Marshal (now a New York City police officer), and the defendant himself, the court found that the search was entirely reasonable under the circumstances. The court concluded that the search was lawful under the then-prevailing standards in this Circuit, since at a minimum, defendant was a profile selectee, activated the magnetometer, and failed to produce any identification. See, e.g., United States v. Ruiz-Estrella, 481 F. 2d 723 (2 Cir. 1973), and United States v. Bell, 464 F. 2d 667 (2 Cir.), cert. denied, 409 U.S. 991 (1972).

The court further concluded that the search was lawful even under United States v. Albarado, 495 F. 2d 799 (2 Cir. 1974), which announced somewhat stricter standards governing



airport searches, since the search only took place following two, possibly three, pass-throughs and activations of the magnetometer (Tr. 22, 116). Id. at 808-10.

The court also took into account, inter alia, testimony which it credited that (1) signs were posted at La Guardia warning of searches (Tr. 40); (2) the magnetometer was openly situated (Tr. 23); and (3) the Marshal asked for and received defendant's consent to a pat-down search and subsequent search of the flight bag (Tr. 15-17, 26-27). See Tr. 122-23, quoting United States v. Albarado, supra at 808. See also United States v. Clark, 498 F. 2d 535, 537-38 (2 Cir. 1974).

Defendant has now stipulated with the government that the record of the suppression hearing, together with the transcript of a recorded interview with him following his arrest on September 24, 1971, shall serve as the trial record. (Supplemental Stipulation of Evidence, filed August 13, 1974.) No question has ever been raised concerning the legality or accuracy of the interview transcript. Defendant has also executed a waiver of jury trial, dated May 29, 1974, a waiver of his presence and, more particularly, a supplemental waiver of any right to be present in open court "at the time the Court issues its judgment in the case."<sup>1</sup> Under the circumstances, the court deems it appropriate to recognize the express waiver of presence and to proceed, with the government's consent, to judgment on the stipulated record. See 8A Moore's Federal Practice Sec. 43.02(2).

It is not disputed that the substance contained in a plastic bag discovered in defendant's flight bag, upon examination, proved to be 251.3 grams of heroin. (Laboratory Report, Government's Exh. 2; Interview Tr. 1.) It is also conclusive that the heroin was knowingly and intentionally in defendant's possession. Defendant acknowledged having obtained the heroin from a "runner" in New York (Interview Tr. 1), and that he came to New York on his own mission to procure the heroin (Interview Tr. 2).

It is further conclusive that defendant obtained the heroin and had it in his possession, with intent to distribute it to others. Defendant admitted running his own narcotics operation and dealing in narcotics (Interview Tr. 2, 12). The amount of heroin seized under the circumstances makes it clear beyond a reasonable doubt that defendant intended to distribute the heroin as part of his operations. See, e.g., defendant's statement, "If you stop me you stop the whole operation." Interview Tr. 2.

Viewing the stipulated record, the court is convinced beyond a reasonable doubt that (1) the defendant was knowingly and intentionally in possession of approximately 250 grams of heroin, a Schedule I of narcotic drug controlled substance; (2) the possession by defendant was with the intent to distribute the heroin; (3) the possession by defendant was at La Guardia Airport, a place within the Eastern District of New York; and (4) the possession by defendant occurred on or about



September 24, 1971. Accordingly, the defendant, Mozelle Williams, is found guilty of violating 21 U.S.C. Sec. 841(a) (1) as charged.

The defendant is directed to appear with counsel on November 15, 1974, at 11:30 A.M., for imposition of sentence.

So ordered.

/S/ EDWARD R. NEAHER  
U. S. D. J.

Dated: Brooklyn, N. Y.  
October 4, 1974

(TR. 6) ALLEN R. HUTTICK, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: Please speak up so we all can hear you and state and spell your name, please.

THE WITNESS: Allen R. Huttick, H-u-t-t-i-c-k.

DIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q Mr. Huttick, what is your occupation?

A. Presently I am a New York City Police officer.

Q How long have you been so employed?

A. Approximately one year.

Q Prior to that employment, what was your occupation,

Mr. Huttick? A. I used to be a Deputy United States

Marshal, Eastern District of New York.

Q Assigned where? A At the Airport.

Q Were you consistently assigned to the airport?

A. Yes.

Q I direct your attention --

MR. LEVIN-EPSTEIN: Withdrawn.

Q What was your assignment at the airport?

(TR. 7) A Sir, I was assigned to the anti-hijacking program, LaGuardia Airport, New York City.

Q Would you describe for the Court -- unless the Court feels it unnecessary -- what that assignment consisted of? A. The anti-hijacking program was a ground security procedure used by the marshal's service for the FAA, Federal Aviation Administration, to screen passengers prior to boarding of aircraft to ensure no weapons were carried aboard, to prevent hijacking.

Q I direct your attention to September 24, 1971, and I ask you, on that day, were you working? A. Yes.

Q What was your assignment on that day? A. I was working -- I started at 6:30, I believe, in the morning, at TWA, Trans-World Airlines, on the anti-hijacking program.

Q At what airport was that? A. LaGuardia Airport.

Q Directing your attention further to approximately 6:45 in the morning, September 24, 1971, describe the events that transpired on that day? A. I was working the anti-hijacking program, Trans-World Airlines, where there were



procedures for calling a marshall to the gate when a selectee (TR. 8) for the profile was made to the airlines. There was a code over the airwaves in the terminal. We would heed the call and screen the passengers going on a particular flight or aircraft.

Q On the morning of September 24, 1971, Officer Huttick, did you receive a request to appear at a particular gate? A. Yes. There was a call to respond at gate 26, Trans-World Airlines.

Q As a result of that call, did you do anything? A. Yes.

Q What did you do? A. I screened the passengers boarding that aircraft, Flight 301 to Chicago.

Q You mentioned before, the word "selectee." What did you mean? A. That is a person designated by the airlines personnel of being considered part of their hijack profile, and the contents of the profile --

THE COURT: Excuse me just a minute.

Have we abandoned the prior procedure?

(TR. 9) MR. LEVIN-EPSTEIN: No, your Honor.

I note that the courtroom is empty except for the personnel in this case, and I have no objection to proceeding with what the profile is, but I would like to make it clear on the record that if there are other persons present, I would ask that the courtroom be cleared and security measures provided and the matter taken in camera.

MR. WYATT: Ordinarily, we would object to the public being excluded, but counsel has indicated there is no one here, other than court personnel --

THE COURT: And the door is unlocked.

MR. LEVIN-EPSTEIN: To make the record clear, I think the government can cite ample authority for in camera proceedings for this type of testimony.

THE COURT: I am familiar with it.

THE WITNESS: We were called to the gate if a person would fit a profile set by FAA.

BY MR. LEVIN-EPSTEIN:

Q Were you familiar with the profile? A. Yes.

Q What did it consist of? A. A person, male, traveling in a one-way direction, paying cash for a ticket, and we would be called to the gate where the person would be (TR. 10) designated as a selectee.

Q Is it not also a fact that the profile provided that the person be traveling alone? A. Yes.

Q When you say "traveling in a one-way direction," could you be more specific? A. He would pay cash for a ticket and have a one-way ticket.

Q Now you received a request to appear at a particular gate. Would you go on from there, please? A. At this time, personnel would be boarding the aircraft -- other passengers -- and we would have a magnetometer set up at the boarding gate, between the gate and the boarding area, all



passengers would be screened through the magnetometer.

Q What did you do when you arrived at the gate?

A. I stationed myself between the aircraft and the magnetometer, watching the magnetometer along with airlines personnel as to positive reactions to metal content by airline personnel.

(TR. 11) Q What is a magnetometer? A. A magnetometer is a machine made to read a metal reading of a pistol, and the reading should be low enough for a .22 caliber pistol. Sometimes they were set higher, and these weapons would go by us.

Q Is it fair to say that the magnetometer in use on that day was a normal magnetometer that was being used?

A. Yes, it was.

Q Were you familiar with the device and its operation?

A. Yes.

Q Were you able to make use of the magnetometer in use on that particular day at any particular time to accomplish your duties? A. Yes, it was working properly --

MR. WYATT: Objection. That is a conclusion and I would object without additional information as to how he arrived at that conclusion.

THE COURT: I will sustain the objection on the grounds that there isn't a foundation.

You may inquire --

BY MR. LEVIN-EPSTEIN:

Q Officer Huttick, when you approached the --- when you first observed the magnetometer, did it appear to (TR. 12) be working? A. Yes. Myself and the airlines supervisor were standing at the gate, and prior to boarding, the airlines supervisors would walk by with metal in their pockets, and this would register on the magnetometer reader, facing the other side, by where the passengers were boarding, and we could then check the reading prior to passengers boarding.

Q Did you conduct such a test on this morning?

A. Yes.

Q And was the test showing the same results as in the past? A. Yes, it was reading a high meter reading.

Q So, you are testifying -- to paraphrase -- that during the course of this experiment or test, the magnetometer in question, particularly the one you were observing, behaved as it should have, under normal circumstances? A. Yes.

Q You testified, Officer Huttick, that you placed yourself in a position between the jetway and the magnetometer so as to be able to observe the magnetometer? A. Correct.

Q Was anyone going through the magnetometer during (TR. 13) this time? A. Not when I first arrived.

Q After you arrived? A. Boarding procedures had started and the passengers on the craft started to be boarded.

Q Do you recall the flight number? A. 301, I believe.



Q TWA? A. Right.

Q Do you recall the gate this was at? A. Gate 26.

Q How many passengers did you observe going through the magnetometer? A. Approximately 100 or more.

Q Did you observe anybody going through the magnetometer where the magnetometer reacted positively for presence of metal on the person? A. Yes I have -- I did.

Q Do you see anyone in the courtroom to whom this reaction attached? A. Mr. Mozelle Williams, in the brown suit.

MR. LEVIN-EPSTEIN: May the record indicate the witness has pointed to the defendant, Mr. Williams.

Q When Mr. Williams went through the magnetometer, (TR. 14) was he carrying anything? A. Yes, he was carrying an airlines bag, small bag.

Q Can you describe the bag for the Court? A. To the best of my recollection, it was small; a small carry-on, approximately two feet long and a foot wide.

Q How was it being carried? A. It was in his hand.

Q When he passed through the magnetometer carrying this bag, as you testified, what happened, if anything? A. The magnetometer read a metal reading.

Q What did you do then? A. At this time Mr. Williams was stopped by the airlines personnel and asked for identification.

Q Were you present when he was asked for the identification? A. Yes.

Q What did Mr. Williams do after hearing this request? A. He stated he had no identification. At this time, with no identification, the airlines personnel turned him over to myself, and I asked him for identification.

(TR. 15) Q What happened then? A. Mr. Williams had no identification, as far as the name on the ticket would go.

Q For a moment, officer Huttick -- at this point in the procedure, what was the normal procedure you followed in cases of this sort as of that time? A. At this time, if the person couldn't identify himself with the same name as on the ticket, we would ask if he would consent to a voluntary search.

Q Did you ask Mr. Williams that? A. Yes.

Q What was the response? A. Yes, he would consent to a pat-down search.

Q What is that? A. A pat-down search is a pat-down of the exterior clothes for any hard objects or unusual bulges, where a weapon might be carried.

Q What were the results? A. We found no weapons at all.

Q Where was this carried out? A. In the jetway between the craft and boarding area.

Q Describe the circumstances surrounding that (TR. 16) patdown. A. It was myself, the airlines person



and Mr. Williams.

Q So there were how many people? A. Three.

Q One person from the airlines? A. Right.

Q This occurred within the jetway? A. Yes.

Q Describe the jetway for the record? A. It is an extension between the craft and boarding area.

Q Are there doors at either end of the jetway?

A. Yes.

Q Were they opened or closed during this patdown?

A. They were closed.

Q And can you describe the patdown of Mr. Williams at this time? A. Yes. Mr. Williams was asked to place his hands on the wall and above his head and over the wall in a spread-eagle position; his legs behind him. He was patted (TR. 17) down from the head, arms, body and lower legs.

Q Where was the bag at this time? A. On the floor.

Q During the patdown, did you find anything? A. No.

Q Then what happened? A. We asked if it would be all right to check his bag for weapons and he said there were no weapons in the bag, and he said, "all right." I placed my hand in the bottom of the bag and felt a hard object.

Q And what did you do? A. I pulled out the object and found a canister of white powder and two bags underneath the white canister, which I also pulled out. It was clear plastic containing white powder.

Q What did you do then? A. We asked Mr. Williams

did he know what the contents of the canister and bags were, and he said he did not know.

Q What happened then? A. He was placed under arrest for possible possession of alleged narcotics.

(TR. 18) Q Was he advised of his rights? A. No.

Q Did he make any statements at that time? A. No.

Q Then what happened? A. He was taken to gate 31, where our office was at.

Q How far from the TWA boarding gate was your office? A. Approximately 300 feet.

Q Was Mr. Williams placed in handcuffs or other manacles of any kind? A. Yes, he was.

Q Because he was placed under arrest? A. Because the white powder was alleged to be narcotics, and until verified, we took security procedures.

Q So, it was because he was placed under arrest? A. Yes.

Q When you arrived at your office, what did you do then? A. When we arrived at gate 31, Eastern Airlines, we had marquis testers; heroin and cocaine testers. We took the white powder contained in the canister and white (TR. 19) plastic bags and made a field test. The field test of the two plastic bags was positive for narcotics. The canister had a negative result. The content was unknown.

Q When you say "the content was unknown," are you speaking of the substance or volume per suspension? A. The volume per bag.



Q The percentage? A. Yes.

Q That it was definitely a positive field test for heroin? A. Yes, it was.

MR. LEVIN-EPSTEIN: In light of the comments which have been made by both Mr. Wyatt and myself prior to this testimony and reserving the right to put on more evidence at a later time, I believe that completes the government's inquiry of this witness on direct examination, as to the motion to suppress, and I have no further questions on that basis at this time.

THE COURT: Mr. Wyatt, do you have any cross-examination?

MR. WYATT: Oh, yes.

(TR. 20) CROSS-EXAMINATION

BY MR. WYATT:

Q At the time you had this contact with Mr. Williams, did you have a warrant for his arrest? A. I did not.

Q Did you seek a warrant -- search warrant? A. I did not.

Q Now at the time that you had this contact with Mr. Williams, did you have a badge of any sort? A. A shield?

Q Yes. A. Yes, I did.

Q What shield was that? A. It was the United States Marshal's shield and picture identification.

Q Did you ever present that shield to Mr. Williams?

A. Yes, I did.

Q At what point in time did you present the shield to Mr. Williams to identify yourself as a Deputy United States Marshal? A. When he was turned over to me by airlines personnel.

(TR. 21) Q This was immediately after the TWA personnel turned him over to you? A. Yes, sir.

Q And how long in seconds after you presented your identification, did you have this conversation with Mr. Williams regarding a patdown? A. I'd say oh, almost immediately.

Q Did Mr. Williams appear nervous to you at the time? A. No, he did not.

Q As a matter of fact, there was nothing unusual about the appearance of Mr. Williams at the time that you were having this encounter with him? A. You mean physically?

Q Yes. A. None -- physically.

Q Did you testify that you overheard a conversation between Mr. Williams and a representative of TWA? What was the first thing that you heard between the person at TWA and Mr. Williams? A. The first thing I heard was, I believe, he asked Mr. Williams to step through the mangetometer a second time.

(TR. 22) Q That is the first thing you heard? A. Right.

Q And you heard him say to Mr. Williams, "Step



through the magnetometer a second time," is that correct?

A. I believe so, yes.

Q What was the next thing you heard? A. The airlines asked for identification.

Q What did you hear the person say? A. "Do you have any identification, sir?"

Q Did you hear Mr. Williams say anything?  
A. I believe -- no, I didn't.

Q What was the next thing you heard? A. The airlines personnel told me he was unable to show identification.

Q Where was Mr. Williams when the statement was made? A. Across the airlines personnel.

Q I know that at the airlines entranceway to board craft, they have little ticket sections where the airline personnel receive the ticket and one goes there to get a seat assignment. Do they have such an arrangement at that particular airport? A. yes.

(TR. 23) Q Immediately behind the place where the ticket takers are located, there is usually a large area where the tickets are received for the airlines personnel --

A. The boarding area was not completely partitioned off but open to the airlines terminal.

Q The position where the magnetometer was located, was it visible from the place where the passenger would enter it --

MR. WYATT: Strike that.

BY MR. WYATT:

Q Was the area where a passenger would contact the ticket takers, would the magnetometer be visible from that position? A. Yes.

Q So, if I understand your testimony, there was no partition behind the airline ticket takers that would obstruct the view of the magnetometer? Yes. Correct.

Q Now, after the conversation between Mr. Williams as you recall it, that the person said, "Proceed through the magnetometer a second time," and the conversation that the person had with you that Mr. Williams had no identification, what was the next thing you recall happening? A. Once he (TR. 24) was turned over to myself, I told him I was a Deputy United States Marshal making an FAA security check.

Q How did you do that? A. I took out my shield --

Q Yes -- A (continuing) -- I took out my shield and showed him the shield.

Q You are demonstrating, for our purpose -- you are holding an imaginary badge taken from your left breast -- A. Left breast pocket, and I placed it in front of Mr. Williams.

Q What did you say? A. I said I was a Deputy United States Marshal making a Federal Aviation Check, FAA check.

Q Did you have a side arm? Do you understand?  
A. Yes.



Q Did you have a pistol or gun? A. Yes.

Q You had one at the time? A. Yes.

Q Did you present that to Mr. Williams?

A. Never did.

(TR. 25) Q You never drew your sidearm? A. Never did.

Q You testified there was a TWA person there. Was there more than one, or just one? A. There were more than one in the area, but only one was working that particular boarding station.

Q Was that a male or female? A. Female.

Q You recall that? A. Yes.

Q You don't recall seeing a caucasian male there, working that particular desk? A. I don't recall -- might have been in the area.

Q And then, as I understand your testimony, you directed Mr. Williams to consent to a search? A. Yes.

MR. LEVIN-EPSTEIN: Objection, your Honor, as to the form.

THE COURT: Yes.

MR. WYATT: I am sorry. I didn't mean that -- A Freudian slip, so to speak.

BY MR. WYATT:

Q You requested that Mr. Williams be patted down?

(TR. 26) A. I asked Mr. Williams to consent to a voluntary search before boarding the craft.

Q What did you say to Mr. Williams, specifically?

A. I asked him to consent to a volutnary search before boarding, because we had a positive reading on the magnetometer.

Q This is what you said to Mr. Williams?

A. This is a form I always used.

Q What did Mr. Williams say to you when you said, "I want you to consent to a voluntary search?"

MR. LEVIN-EPSTEIN: I don't think Mr. Wyatt is recalling the words accurately at all. I object again, your Honor.

THE COURT: When you said it was a form you always used, were you referring to something written on a card or paper?

THE WITNESS: No, just mentally -- "Would you consent to a voluntary search before boarding the aircraft? We have a positive reading on the magnetometer and we are looking for weapons."

THE COURT: And what you just said "Would you consent" -- is that what you recall saying to this defendant?

THE WITNESS: To the best of my recollection.

(TR. 27) MR. WYATT: Thank you.

CROSS-EXAMINATION

BY MR. WYATT (continued):

Q What did Mr. Williams say in response to that question? A. He said, "Yes," and "I am not carrying any weapons."



Q What is your recollection based upon that you heard Mr. Williams say, "Yes, I am not carrying weapons"? What do you have that caused you to recall that or are you just recalling that from --

MR. WYATT: Strike that.

Q What is the basis upon which you recall that?

A. That is the best that I recall today of what Mr. Williams said at that time.

Q You wrote a report of these events, did you not?

A. Yes, sir.

Q That was at a time when matters were fresh in your mind? A. Yes.

Q That was back in September, 1971? A. Yes, sir.

Q You have seen that report, consisting of one (TR. 28) page, since you have been here today? A. Yes.

Q Did you see anything in the report that you heard Mr. Williams say, "Yes, I consent to a search. I do not have any weapons?" A. No.

Q Now, did you ever see the ticket that Mr. Williams had? A. Yes.

Q Do you have it here? A. I don't know. I haven't seen it.

MR. WYATT: May I inquire of the government?

MR. LEVIN-EPSTEIN: Yes. The government was just given that ticket by Deputy Marshal Michael Pizzi and I hand it to Mr. Wyatt.

MR. WYATT: May this ticket envelope and its contents be marked Defendant's first in order -- A.

THE CLERK: Yes. A.

MR. LEVIN-EPSTEIN: For identification, I assume, at this time?

MR. WYATT: Yes, for identification.

MR. LEVIN-EPSTEIN: No objection that that be marked in evidence, your Honor.

(TR. 29) THE COURT: Are you offering it in evidence?

MR. WYATT: Yes, we offer it in evidence.

THE COURT: I am not directing you to do that.

It has been marked for identification, and is it your purpose --

MR. LEVIN-EPSTEIN: The government will stipulate that that is the airline ticket presented by Mr. Williams on the date in question.

THE CLERK: Airline ticket marked in evidence as Defendant's Exhibit A in this suppression hearing. (So marked)

CROSS-EXAMINATION

BY MR. WYATT (continued):

Q Now, Officer Huttick, after you had this conversation with Mr. Williams, what was the next thing that you did? A. After I asked him for identification?

Q Yes. A. He was unable to show me identification.



Q You said he was unable to do so. What did he do -- physically go into his pocket and say, "I have no identification," or "I am sorry, I have no identification?" Did he say anything, or did he just conclude he had no identification? A. He just stated to me that he had no (TR. 30) identification.

Q You didn't write that in your report, did you? A. No, I did not.

Q Now after that, he concluded that Mr. Williams had no identification, then you did the patdown search? A. Correct.

(TR. 31) CROSS-EXAMINATION

BY MR. WYATT (continued):

Q And prior to this time, you had identified yourself as a Deputy United States Marshal? A. Yes.

Q As a matter of fact, prior to requesting the permission to pat Mr. Williams down, you had identified yourself as a Deputy United States Marshal, had you not? A. Yes, I did.

Q Now, after Mr. Williams placed his hand on the side of the wall and you patted him down, as I understand your testimony, you found nothing unusual on the person of Mr. Williams; is that correct? A. That is correct.

Q In other words, you found no bulges or any objects that to you, you believed might be a threat to your safety or the safety of others, correct? A. That is correct.

Q And having assured yourself that Mr. Williams was not carrying the weapon or any object that you believed would be a threat to yourself or the safety of others, you then proceeded to do what? A. Well, I knew he was not carrying it on his person, but still, I had a positive reading on the magnetometer, so I was concerned whether or not there was a weapon in the bag.

(TR. 32) Q So, as I rephrase the question earlier and let me restate it to you, after you ascertained there was no threat from having patted down Mr. Williams, you did what, next? A. I asked him if he had any weapons in his bag and if we could check his bag for any weapons, at which time he stated, "yes." that there were no weapons in the bag.

Q Now, in the report that you wrote, you didn't include that in your report, did you? A. No.

Q That you asked Mr. Williams for permission to search his bag? A. No, I did not.

Q Now, do you recall, Officer Huttick, testifying before the grand jury in this case back in January 4, 1972 --- assuming the date is correct -- do you recall testifying in this case before the grand jury? A. Yes, I remember going before the grand jury in this particular case.

Q I am sorry? A. I remember going before the grand jury on this particular case.

Q I cannot seem to hear you. Wait until I finish



(TR. 33) my question, and then I can hear you. Now, what did you say? A. I remember going before the grand jury on this particular case.

Q I just had a problem hearing what you were saying. At any time did you tell the grand jury that after you patted Mr. Williams down, you then asked for permission to search that bag? A. Do I remember telling them that?

Q Yes. A. I do not recall at this time.

Q Have you read your testimony of the grand jury testimony, particularly page 6, lines 14 through 25 for the benefit of counsel. Did you read your testimony of the grand jury testimony? A. I didn't read it line for line. I went over it briefly.

Q When did you do that? A. Yesterday afternoon.

Q Based upon your having read it, then, do you recall having asked Mr. Williams for permission to search (TR. 34) that handbag? A. I do not recall at this time whether I said that or not.

Q I have a copy of the transcript, and we have it available. Do you believe, if you were able to read that transcript, it would assist in refreshing your memory as to whether or not such a question and answer was given by yourself to the grand jury? A. Yes, it would.

MR. WYATT: May I approach the witness with respect to that portion of his testimony?

THE COURT: You may.

BY MR. WYATT:

Q For the record, Mr. Huttick, I am showing you what appears to be a transcript of the proceedings before a grand jury taken January the 4th, 1972. Assuming that the contents are the same as I have represented them, to be, I ask you if that appears to be a copy of the same transcript you read yesterday? A. Yes, it does.

Q Would you look through that transcript and see if that refreshes your recollection with respect to the question of searching the handbag? (Pause) A. There is no question (TR. 35) stating whether or not I asked him to check his bag.

Q Having gone through the transcript of the grand jury testimony, is it fair to state, Officer Huttick, that at no point in time in your questioning and giving answers to the activity of this particular date, September 24, 1971, did you make a statement that Mr. Williams consented to --

MR. WYATT: Strike that.

Q (continuing) -- that you requested and received consent from Mr. Williams to search that bag? Is that a fair statement? A. Could you repeat that, please?

Q Is it fair to state that, having read the transcript of the grand jury minutes, that at no time did you state that you requested of Mr. Williams, permission to search the handbag, and that he gave consent? Is that a fair statement? A. I wouldn't say so.



Q You would not say that is a fair statement?

A. I would not say that.

Q Now, is there any place in the grand jury testimony that you gave in this case where you asked (TR. 36) Mr. Williams' permission to search the bag?

A. No, there is not.

Q And is there any place in the transcript where Mr. Williams -- where you state that Mr. Williams said, "Yes, you may search the bag. I have no weapons there."

A. I believe it states in there that the defendant stated that he had no weapons in the bag.

Q Now, moving on, if we may, in your earlier testimony on direct examination, you testified that you felt the bag and felt a hard object; is that correct? A. I placed my hand into the bag.

Q I see. So, prior to placing your hand inside the bag at no time did you feel the outside of the bag for the presence of weapons. Is that a fair statement? A. Yes, it is a fair statement.

Q What you did, as I understand your testimony, was that after you frisked Mr. Williams down and satisfied yourself with respect to his physical person, that the next activity was to place your hand inside of the bag; is that correct? A. That is correct.

Q And at that time, you felt what you believed to be a hard object; is that correct? A. Correct.

(TR. 37) Q And that is when you discovered the contraband that is the subject of this activity here today? A. Yes.

Q Now, have we covered, in our respective questioning of you, all of the conversations that proceeded between you and Mr. Williams and the conversations as far as you heard, between the airlines personnel and Mr. Williams?

A. To the best of my recollection, at that time and place.

Q Now, I understand that we have had some discussion of the fact that there had been some conversations that took place at a later time, but this was after Mr. Williams was arrested; isn't that correct? A. That is correct.

Q Did you hear anyone advise Mr. Williams that he need not submit himself, his person or other property, to a search?

THE COURT: Would you like that read back?

THE WITNESS: Yes.

THE COURT: Would you read the question again, please, Miss Ginsberg?

(Record read by reporter)

THE WITNESS: Was this at the gate?

(TR. 38) Q at any place? A. At the time he was given his rights.

Q When was that. A. When we arrived at gate 31, Eastern Airlines.

Q That is after he was arrested? A. Yes.

Q Prior to that time, at no point did you hear anybody tell or advise him along those lines, did you? A. He



was just asked if he would consent to a voluntary search, not that he did not have to.

Q Did you hear anybody advise Mr. Williams, for instance -- as we do in most Federal buildings -- we tell a person, "before you can enter these premises we will have to examine your briefcase." Did you hear anybody tell Mr. Williams that? A. Yes.

Q Who? A. I did, before you go on the aircraft.

Q What did you say? A. I said, "Would you consent to a voluntary search before going on the aircraft?"

Q I understand what you said and I may be hyper-technical in this question and it is important, but did you hear anybody tell Mr. Williams that as a condition to his (TR. 39) boarding the plane, that he has to consent or submit himself to a search? A. At that time there were signs posted on the boarding gate; FAA signs stating that all passengers are subject to a search, prior to boarding the aircraft.

Q Were there signs at that particular gate?

A. Yes.

Q Where were they posted? A. I believe right at the boarding gate.

Q You recall seeing them? A. I know they were there; I had seen them.

Q You recall seeing -- taking your present state of mind, you can recall seeing the signs there? A. They had to be posted at every gate.

Q I am talking about your recollection presently as to what was physically located at whatever the gate number is, on September 24, 1971? Do you have a copy or a picture of that gate as it appeared on that day? A. No, I did not take a picture of the gate.

Q Now, isn't it a fact that your recollection with respect to the presence or lack of presence of those signs is that you believe that they were there, but you have no independent recollection at this moment? A. I had seen (TR. 40) them at the gate, but I don't recall in what position or what wall they were on at the gate.

Q Now, was there a point in time when Mr. Williams was caused to walk through the magnetometer without the bag? A. No.

Q On all of the occasions that you observed Mr. Williams to go through the magnetometer, he was carrying the bag? A. Yes, sir.

Q Now, is that based upon your recollection, or is this based on something that you had in your report? A. It is based on my recollection.

Q You did not include anything along those lines in any reports that you made, did you? A. No, I did not.

Q Nor did you testify that Mr. Williams going through on numerous occasions or multiple occasions carrying a handbag, did you? A. I do not recall whether I stated that or not.



Q Now, you indicated to us about going into the specific minutiae that the TWA representative had determined Mr. Williams met a certain profile. You cannot tell us --

(TR. 41) MR. LEVIN-EPSTEIN: If I might interrupt for a moment -- may I inquire of Mr. Wyatt whether he intends to go into the details? As I mentioned before --

MR. WYATT: I will not, for the same reason we all understand.

MR. LEVIN-EPSTEIN: Sorry for the interruption.

CROSS-EXAMINATION

BY MR. WYATT (continued):

Q Is it fair to say, Officer Hattock --

THE COURT: Huttick.

Q -- Officer Huttick, that you did not question the TWA representative as to what specific aspects of Mr. Williams that he considered as falling within the profile?  
A. No, I did not.

Q So that you cannot testify from your own knowledge that the requirements for the profile had been met by Mr. Williams, could you? That would be something that Mr. or Ms. -- or whoever -- the person from TWA would have to testify to, isn't that a fair statement? A. That is correct.

Q Had you worked with these particular personnel at TWA prior to September 24, 1971? A. Yes.

(TR. 42) Q And how many months, weeks, years? A. I'd say approximately one month at TWA and two months at Eastern Airlines.

Q Did you know the persons who were working there? A. Not personally, but as far as professionally, yes.

Q And you had worked with them for all of about 30 days -- the people at TWA? A. Correct.

Q Then may I draw also the deduction that you had been working at this duty for approximately two months? A. Approximately two months -- a little more -- three months.

Q Had you been working at some other airline or station? A. No, I was working in the Eastern District, here.

Q Now, other than those matters which you have brought to our attention here today, was there anything about Mr. Williams in the way of information that you had that caused you to feel that you must search Mr. Williams and his person?

(TR. 43) A. None.

Q Now, we had earlier talked to you about the magnetometer and you indicated to us, I believe, that you had checked the machine by having a person from TWA pass through the magnetometer, thus activating the machine. Is that in substance what you had done? A. Well, the marshals service was not in the service of maintaining or maintenance of the magnetometer -- the airlines were.



Q Were you present when the demonstration was taking place? A. Yes.

Q And who was conducting the demonstration?  
A. The airlines.

Q And the United States marshals did not --  
MR. WYATT: Strike that.

Q -- you understand that in a magnetometer, there is a control device by which the sensitivity of the machine can be altered -- you understand that? A. Yes.

Q And if you turn the machine along a certain plane, that it will become maybe super-sensitive --

MR. LEVIN-EPSTEIN: Objection to the form. It doesn't sound like a question.

(TR. 44) THE COURT: Well, it sounds like the imparting of information. I am sure it is designed to elicit a response. Perhaps if you put the question into the form, "Do you know"-- after all, this is cross-examination.

BY MR. WYATT:

Q Do you know, do you not, Officer Huttick, that in the construction of the magnetometer that was being used there at that particular gate, that the sensitivity -- there are gradations of sensitivity and reactions -- that's correct, isn't it? A. Yes, it is.

Q Do you know at what level of sensitivity that particular machine had been turned to? A. No, I do not.

Q You did not check that, did you? A. It was

not my function.

Q So, when you tell us that the machine was working normally, what you really mean is that it was picking up what at least, to your mind's eye, was metal -- it was detecting metal? A. Correct.

Q And to that extent, you are saying to us that the machine worked; isn't that correct? A. To the best (TR. 45) of my knowledge, it was in operational order.

Q But in terms of whether or not that machine would pick up a hairpin on a lady or a man -- if he were so disposed -- you cannot tell us if that machine was turned down so that it would pick up that small an object, can you? A. No, I do not know that information.

Q Now I assume that these magnetometers have a scale of reading from zero to some other number. Do you recall what number the machine registered when Mr. Williams proceeded through it? A. No, I do not.

Q Nor did you write it down anywhere, did you? A. No, I did not.

Q Incidentally, after Mr. Williams was arrested, did you find metal on his person at all?

MR. LEVIN-EPSTEIN: Objection. It is outside the scope of the suppression hearing.

MR. WYATT: I submit to the Court, if I may be heard, that it is relevant and material because part of the contention that we have is that there is a question as to



whether or not the metal detection --

THE COURT: Overruled. Would you re-read the question, please, Miss Ginsberg?

(TR. 46) (Question read by reporter)

THE WITNESS: I don't know if the canister was metal or not -- ferrous metal that could be picked up. Also, I believe he had a ring. I think that was on my report --

THE COURT: Did I understand your question to be directed, not to the bag, but to the person?

MR. WYATT: That is correct.

BY MR. WYATT:

Q Only to the person. A. A ring, so far as my recollection recalls.

Q So do you have the ring? A. It was personal property. I believe it was turned over. I don't know if it is here or not.

THE COURT: That's the only metal-like object you remember coming from his person? No keys in the pocket?

THE WITNESS: I do not recall.

THE COURT: A metal pencil or pen?

THE WITNESS: I do not recall, your Honor.

THE COURT: When you referred to the canister before, it is still your testimony that the canister came out of the bag?

(TR. 47) THE WITNESS: Correct.

BY MR. WYATT:

Q In any case, so that we may get into the matter -- you have a recollection of a ring on his physical person and you recall there was a metal canister that the contraband was contained in; is that correct? A. No. The contraband was not in the canister. The contraband was in clear plastic bags.

Q I thought I heard you say a metal canister.  
A. Yes, and it contained white powder, but that was found to be dextrose.

MR. WYATT: Do you have that metal canister here?

MR. LEVIN-EPSTEIN: We do.

THE COURT: Are they in lock-seal envelopes?

MR. LEVIN-EPSTEIN: Yes.

MR. WYATT: If I can just feel it.

THE COURT: Yes.

MR. LEVIN-EPSTEIN: Depending on what Mr. Wyatt intends to prove, as an offer of proof, by feeling the lock-seal envelope I cannot even represent that it is a metal container because it is a lock-sealed envelope.

THE COURT: Is there any description on the (TR. 48) envelope, or key reference to a report?

MR. LEVIN-EPSTEIN: I have the report here.

THE COURT: I assume you will make that available to Mr. Wyatt, if it has not already been made available.

MR. LEVIN-EPSTEIN: It has not yet been made available.



THE COURT: Well, why don't you let Mr. Wyatt look at it? It is not this former marshal, now a policeman's report?

MR. LEVIN-EPSTEIN: No.

THE COURT: But it bears on the question of that physical evidence.

MR. WYATT: Your Honor, if we can offer to stipulate that what the report says is that contained in the package is a double-layered plastic bag --

MR. LEVIN-EPSTEIN: I can't stipulate to that because there is no reference to page 2, but with the Court's instruction, I will break the seal with this understanding it will remain in my presence and there will be no controversy as to the chain of custody.

MR. WYATT: Yes.

MR. LEVIN-EPSTEIN: There is a laboratory number (TR. 49) for 4874, which I assume refers to this laboratory report I am holding, which I will mark for evidence, bearing a similar number. Also noted on the laboratory report -- withdrawn -- and also noted on the reamer, next to the lock-seal portion of the envelope I have just referred to, is the number 4874, and the signature purporting to be that of one G. Griffith, the chemist from BNDD, received 11/9/71, and I assume that to be November 9, 1971. I am now attempting to break the seal.

THE COURT: Have you a penknife?

MR. LEVIN-EPSTEIN: I am afraid the government has done a very good job.

THE COURT: That is why it is called lock-sealed.

MR. LEVIN-EPSTEIN: But not permanently, your Honor. The contents of this envelope have just been turned over to Mr. Wyatt and for purposes of clarity of the record --

THE COURT: I would suggest to have the envelope and canister marked.

MR. WYATT: B would be satisfactory.

(TR. 50) MR. LEVIN-EPSTEIN: And the lab report.

MR. WYATT: And the lab report.

MR. LEVIN-EPSTEIN: I would suggest, since this is physical evidence, it will remain in the chain of custody condition apparent to the Court and I would prefer if Mr. Wyatt does not object, that it be marked as a government's exhibit.

MR. WYATT: Satisfactory.

(TR. 51) MR. LEVIN-EPSTEIN: May this envelope and its contents since removed and in an unlocked condition, be marked as Government's Exhibit 1 in evidence.

MR. WYATT: No objection.

THE CLERK: All right.

MR. LEVIN-EPSTEIN: And upon completion of that marking, may this lab report dated --

THE COURT: I suggest that the Clerk mark the



envelope 1A and the canister as 1B.

MR. LEVIN-EPSTEIN: No objection. May this lab report dated November 12, 1971, signed by one Mr. Porto and countersigned by Mr. Gladstone be marked. The canister has a strip of apparently Scotch brand cellophane tape holding the lid down and again, a notation on the canister, 4874, the letters EX/C, meaning, I believe, Exhibit C, and the date, 11/1/71.

THE CLERK: Government's Exhibit number 1A and 1B in evidence in this suppression hearing.

(So marked)

MR. LEVIN-EPSTEIN: The government would request that this laboratory report be marked the next in sequence, or number two in evidence, unless there is no objection to the lab report.

(TR. 52) MR. WYATT: No objection to the lab report.

MR. LEVIN-EPSTEIN: I apologize for the interruption.

THE CLERK: Government's Exhibit 2 in evidence.

(So marked)

MR. WYATT: Nothing further of this witness at this time, your Honor.

THE COURT: Just a minute. Let me think of something before you sit down, Officer Huttick. At the time you conferred with the defendant, did you have any impression that he had any difficulty understanding you because of any language

difficulty?

THE WITNESS: No, I did not.

THE COURT: He seemed to understand clearly?

THE WITNESS: As far as I could undertake, he understood what I was saying.

THE COURT: The words he uttered to you were in English, and you understood him -- no foreign accent?

THE WITNESS: Yes, your Honor.

THE COURT: No foreign accent?

THE WITNESS: No foreign accent.

(TR. 53) THE COURT: Aside from your reference to the signs posted in the area, was any statement made to him that if he did not submit to a search, he would not be permitted to board the aircraft?

THE WITNESS: No, your Honor -- only if he had refused to consent to the search then at that time, I would tell him it would be unable for him to board the aircraft, seeing that a reading had been read on the magnetometer and there was no positive identification of the individual.

MR. LEVIN-EPSTEIN: If I may interrupt for a moment, perhaps to clarify, may I ask a question?

THE COURT: You have the right of redirect. Go ahead.

REDIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN:

Q In response to the Court's question -- and correct



me if my recollection of the question differs from your Honor's -- the Court asked you if at any time you told Mr. Williams, should he not submit to a search prior to boarding the plane, he would not be permitted to board. Did you tell Mr. Williams at any time that he would not be permitted to board the plane unless he submitted to the search?

(TR. 54) A. Not to my recollection.

Q Was it your intention to convey this --- and I understand that I am leading the witness, but for purposes of clarity and there is no jury here, that -- that has Mr. Williams refused to consent to this search, would it have been your intention not to let him board the plane?

A. This is what I would have told him.

MR. LEVIN-EPSTEIN: Have I confused you more, your Honor?

THE COURT: No, no. You mentioned something about Dextrose in the canister. Does it appear on the label? Is that how it came to your attention?

THE WITNESS: Yes, your Honor.

THE COURT: I see.

MR. LEVIN-EPSTEIN: Has the court completed its own questions?

THE COURT: I have.

MR. LEVIN-EPSTEIN: One or two questions.

REDIRECT EXAMINATION

BY MR. LEVIN-EPSTEIN (continued)

Q Officer Huttick, you testified on cross-examination that when you testified in the grand jury, you agreed with the record that there was no mention in the (TR. 55) transcript of the grand jury of you ever having specifically asked Mr. Williams for his consent to search the bag. Were you ever asked the question by the Assistant United States Attorney, "Did you ask Mr. Williams' consent to search the bag?" Or words to that effect? A. I was never asked that question.

Q You also testified that Mr. Williams had a metallic object on his person subsequent to his arrest.-- a ring, you testified. How many people did you observe pass through the magnetometer on that morning, boarding that particular flight? A. Approximately 100.

Q How many clicked the magnetometer? A. Four or five.

Q Now, can you recall from your own recollection of approximately how many of those people who did not trip the magnetometer were apparently carrying some metallic object visible to you, if you can recall? A. None.

Q None of them had any metallic objects whatsoever? A. The ones that tripped it?

(TR. 56) Q The ones that did not. A. The ones that did not have metallic objects did not trip it.

Q Were any of them wearing a ring? A. Yes.

Q I think I have confused you. You said that you



observed more than 100 people passing through the magnetometer? A. Yes.

Q Of the 100-odd people passing through the magnetometer, only three, four or five in that area, tripped the magnetometer? A. Approximately.

Q Showing to you a presence of metal on their person, or what they were carrying? A. Other persons had proper identification --

Q No. I am not talking about the others who tripped the magnetometer. Let me ask it this way: In your experience of having observed various people on various occasions -- including that morning -- passing through the magnetometer, was it possible and did you observe it occur where people with metal objects, rings, wristwatches, keys in their pockets, passed through the magnetometer without tripping (TR. 57) it? A. Yes.

MR. LEVIN-EPSTEIN: I believe that's all I have, your Honor.

THE COURT: Anything further?

MR. WYATT: Nothing further of this witness.

THE COURT: Officer, you may step down.

MR. LEVIN-EPSTEIN: Your Honor, the hour is ten past one.

THE COURT: Yes, I was going to suggest that we break now, and shall we resume, sat at 2:30, and if you are still not finished, just let the Clerk know and he can call

me if you want more time. I don't know how long the tape is and it may take more time to try to make something out of it.

MR. LEVIN-EPSTEIN: Mr. Wyatt indicated earlier what I believe to be a good idea -- perhaps the Court would be amenable to argument on the motion to suppress, and the government could determine whether or not it would even be fruitful to pursue the other exercise.

MR. WYATT: Yes.

THE COURT: All right. Let me return this ticket to someone.

(TR. 58) THE CLERK: Yes, your Honor. Please hold your exhibits until further notice.

(Luncheon recess taken)

(Whereupon, the reporter was relieved by Henri LeGendre at the commencement of the afternoon session.)

(TR. 65) MOZELLE WILLIAMS, having been first duly sworn, assumed the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. WYATT:

Q Mr. Williams, I want you to keep your voice up, speak clearly. Directing your attention to September 24, 1971, I ask you if you went to a TWA flight number 301 headed for Chicago? A. Yes, I did.

Q And when you arrived at the section to board the plane, did anything unusual happen there? Just answer yes or



no, if anything unusual happened. A. I would say unusual, yes.

Q Did you see any airlines personnel at the entrance to the place where you present your tickets for boarding the plane? A. Yes, I did.

Q And were they in uniforms? A. Yes.

Q And were they uniforms of airlines personnel? A. Yes, they were.

Q And can you describe the persons that you saw (TR. 66) and where they were? A. Yes, I can.

Q And will you tell the Court? A. Okay. There was a man standing directly in front of me, the man that I talked to, and there was a lady standing on his right. Those are the people.

Q And was there a counter between you and the persons that you were dealing with? A. Yes, there was.

Q I have almost inadvertently referred to persons that you were dealing with. You indicated that you talked with a man. Did you talk with the lady, also? A. No, no conversation.

Q Then is it correct to state that you only had a dealing with one man from the airlines? A. Yes.

Q And could you tell the Court, what was the conversation that you had between you and this gentleman? A. Well, the conversation was about me not having identification.

Q If you can, can you tell us what words existed between the two of you, as near as you can? A. Yes, I do.

(TR. 67) Q Tell the Court what words. What did you say and what did he say? A. The man asked me for identification.

Q Had you presented a ticket to him at that time? A. Yes, I had given him my ticket.

Q And did he tear the ticket from the envelope? A. He took it out and looked at it.

Q Then what happened next? A. Then he said, "Well, Mr. Williams, I'll need I.D."

Q And what happened next? A. I said, "I'm sorry, I don't have I.D., I forgot my wallet."

Q What happened after that? A. Then he said, "Well, I'm sorry, you'll have to have I.D." And I said, "Okay, I'll go back and get it and get a later flight. Give me my ticket back."

Q Did he give you your ticket back? A. No.

Q What happened next? A. He said, "Well, I'll tell you what, come on, we'll let you go."

Q Who was speaking? A. I am talking to a man.  
(TR. 68) Q This is the same person you previously identified as being the person wearing a uniform, a TWA person?  
A. Yes, it is.

Q What happened after he said, to let you go this time?

MR. LEVIN-EPSTEIN: Objection. That's not what



the witness testified to.

Q I'm sorry. What happened after you told the man to "give me my ticket back and I'll come back later?"

A. He said, "All right, we'll let you go on, come around here, follow me."

Q And did you do that? A. Yes.

Q Now, at the time you observed this male in uniform, and I think you testified that there was a female in a uniform, did you see any other persons in that immediate area? A. No.

Q Did you see any passengers, for instance, in that area? A. No.

Q Did any passengers -- did you see any passengers (TR. 69) board the plane or enter the entranceway after you arrived? A. No.

Q So after this person told you to follow him, what did you do? A. Well, there was a chain around where I should follow him.

Q And what happened to the chain? A. I waited until he took it loose.

Q Then what happened? A. Then he said, "Give me your bag."

Q Are you referring to the blue bag that we have previously talked about in this case, and we have for our purposes identified as Government's Exhibit number 3?

A. Yes.

Q And that blue American Airlines Bag? A.  
That's correct.

Q Did you hand the bag over to him? A. Yes.

Q Did you do anything after you handed the bag  
over to him? A. No. I would have to correct myself.  
I didn't hand it to him. He picked it up from the floor  
himself.

(TR. 70) Q Then what happened? A. Then he walked me  
over to the thing you go through before you go onto the ramp.

Q Is that a device like a door, entrance to a  
door, without having the door in it? A. Yes.

Q We have been calling that a magnetometer?  
A. Yes.

Q After you walked through this magnetometer, at  
this point did you see anybody there, other than the lady that  
you described and the gentleman from TWA? A. No.

Q And did you walk through the magnetometer?  
A. Yes, he gave me the bag back and asked me to walk through.

Q Did you do that? A. Yes.

Q And what happened then? A. Then he took the  
bag in his hand and told me to walk through by myself.

Q Did you do that? A. I did that also.

Q And what happened next? A. Then he said,  
(TR. 71) "All right, come on."

Q He said to follow him? A. Then come back  
towards the plane again.



Q Did you do that? A. Yes, I did.

Q And then what happened then? A. Then we went inside the door which was going to the plane and that's when he waved for somebody to come here.

Q Now, there is a gentleman here in the courtroom who has identified himself as Officer Huttick, do you recognize him as being the person who came over? A. Yes, that's the person.

Q After Officer Huttick came over to the area where you were, what happened next? A. Well, he said, "Excuse me, sir," -- I'm some type of security for the airlines, and I would like permission to search you.

Q Then what happened? A. I said, "No, there's nothing to search me for. I already explained to this gentleman, if he doesn't want me to ride this plane, I'll go back and get a late flight."

Q Do you remember saying that to this gentleman? A. That's exactly what I said.

(TR. 72) Q Then what happened after that? A. He said, "Well, in that case, I'm searching you anyway. I'm a United States Marshal."

Q Did he do anything to indicate to you that he was a United States Marshal? A. He pulled a badge from his pocket, from the back or -- left side and threw it on the floor.

Q Just a second. He's wearing in the courtroom a badge that's exposed from his breast pocket. Was he wearing a badge exposed in the manner that it is now here in the courtroom? A. No.

Q And is it your testimony that he retrieved the badge from some other place on his person? A. Yes, he did.

Q Did you say anything, did you see anything other than the badge? A. I saw his gun and handcuffs.

Q Where did you see the gun? A. The right hip.

Q And you testified you saw some handcuffs?  
A. Yes.

Q Do you recall where you saw the handcuffs?  
A. They seemed to come from the same position.

(TR. 73) Q Up until this point, did you have any other words between Officer Huttick and yourself? A. No, I hadn't talked to him at all.

Q You hadn't said anything to him? A. No.

Q What happened next? A. Well, I was placed against the wall in a spread-eagle position.

Q Now, Officer Huttick has described the manner in which he had placed your hands up against the wall with your hands in an upright position, pressed against the wall. Did you do that? A. Yes.

Q And you were leaning against it? A. Yes.

Q Where was the badge at this time? A. On the floor, over to my right, behind me.



Q Now, at that time that you had your hands up in the air and up against the wall, did you have the suitcase in your hand? A. No, I didn't have it.

Q Now, where was this suitcase? A. It was behind me, about four feet, behind me to my right.

(TR. 74) Q Incidentally, was that case zipped closed or was it open? A. It was open.

Q It was in an open condition? A. Yes.

Q Did you open it? A. No, I didn't.

Q Do you know how it was opened? A. Yes.

Q How was it opened? A. This man here had opened it already.

Q Did he open that prior to placing your hands against the wall? A. Yes.

Q Had he asked you permission to open that bag? A. No, he did not.

Q Did you hear his testimony in connection with that aspect of his testimony? A. Yes, I heard it.

Q At any time did Officer Huttick ask permission to search your person? A. He asked me to submit to a search one time when I came inside.

(TR. 75) Q And is that the point that you testified that you said -- A. that's right.

Q Now, after you were placed up against the wall and an Officer Huttick patted you down, do you recall what was the next thing that happened? A. Well, he handcuffed me.

Q Did he tell you why you were handcuffed?

A. No.

Q Had he placed his hands inside of the bag?

A. He done that already.

Q He did that prior to frisking you down?

A. Yes.

Q Now, did anyone ever tell you that as a condition to boarding the craft, that you would have to first be searched? A. No.

Q Would you have boarded the plane if you had been told that you had to be searched?

MR. LEVIN-EPSTEIN: Objection.

MR. WYATT: I've heard the objection. I don't think I glean from those words the magic of counsel's objection.

MR. LEVIN-EPSTEIN: On a number of grounds, if (TR. 76) it please the Court. First of all, the question of relevancy, what Mr. Williams might have done, had he done something, which he already testified he hadn't done, it's a question propounded with a question. Secondly, it calls for speculation; thirdly, it calls for a conclusion which is not relevant to the motion to suppress and also, object to the form of the question. If Mr. Wyatt would like me to go on --

MR. WYATT: May I cite some authority to the Court? I would cite United States versus Esrella, 481 F. 2d,



723. It's a 1973 case, out of the second District, ironically from your Honor's Court.

THE COURT: Ironically from your Honor.

MR. WYATT: I would cite to the Court United States versus Miller, that was a case out in California, a case that Judge Ferguson decided, where he indicated that these are prerequisites, before a person can be searched, he must be advised. I'll give the Court the citation. 351, Federal Supp., 184, 1972 case. For the Court's information, the page that I'm referring to for the propriety (TR. 77) of questions that I'm asking, it would be at page 1289. So the Court has all the authorities on the subject. I think I'd better offer some additional authorities on the subject; Cypress versus the United States, 343 Federal 2nd, 95, particularly the language at page 97. I think that ought to be sufficient to the answer to that question.

MR. LEVIN-EPTSTEIN: Cases cited by Mr. Wyatt I respectfully submit does not go to the issue of whether or not the witness should state what he might have done. The question propounded on the record is asking for a conclusion of the witness as I believe I tried to state. What he would have done, had something which might have occurred, occurred. As to his probative value on that basis, I reiterate the objections stated earlier.

MR. WYATT: I might suggest to the Court its

relevancy is that one of the significant things the Court has to deal with at this point is what was the state of mind of the person that, according to one portion of the testimony in that case, purportedly consented to a search. (TR. 78) The position that we take is that there was never a consent; that the person's state of mind was if he had to be subjected to a consent as he has indicated, he would rather have taken his ticket and gone back to get his identification.

MR. LEVIN-EPSTEIN: In that case, the witness testified that that was his intent and the answer to this question is certainly irrelevant.

THE COURT: Well, there is some evidence to the effect that he asked for the ticket back, as he said, in order to go back and get some identification, that he would take a later plane. While I recognize what was said in the Esrella case and also in Judge Ferguson's case, I'm not all together sure, in the light of United States against Alberado (phonetic), which was handed down April 1, 1974, in this circuit, that the state of mind that you refer to is material at this juncture or that it is necessary in every situation that a passenger be informed that he may escape the search if he will turn around and go home. Do you understand?

MR. WYATT: Yes.

THE COURT: The case I refer to is a doctor,



totality of the circumstances approached, and while I (TR. 79) know that state of mind is one of the circumstances, the question as I recall its being framed inquires here as to what the witness would have done or might have done if a different situation presented itself, and to that extent, it is somewhat speculative and hypothetical, too.

So, I think that I will sustain the objection to the question. It seems to me that the overriding issue here is whether or not consent was in fact given, if not in words, by actions. And an inference can be drawn, what a person does or does not do, I recognize there is some conflict in testimony here which the court is going to have to resolve.

MR. WYATT: That's correct.

MR. LEVIN-EPSTEIN: If I might be heard on one other point at this juncture? At no time has the government offered or proffered to the Court what its entire theory is in terms of the admissibility of the evidence which was seized, and the search that occurred. It is granted that in Alberado the main thrust of the government's position was that there was an implied consent. However, based on other authority, it would become apparent to the Court during counsel's argument that there is more than one theory upon (TR. 80) which the government can assert that the search was within the bounds of the Fourth Amendment. Inasmuch as counsel for the defense has framed his position of defense in

terms of implied consent, I feel the objection is proper, and of course the citing of Alberado is proper, but I would not like the Court to believe that it is the government's sole contention of searching --

MR. WYATT: I might also indicate to the Court, I should not like the Court to conclude this case rises or falls on the question of whether or not there was consent. We might indicate to the court there are additional reasons why we believe that search was illegal and unconstitutional.

THE COURT: I'm not going to limit your opportunity for informing me of all those reasons.

MR. LEVIN-EPSTEIN: We are in agreement that at opposite ends of the spectrum.

MR. WYATT: This is premature, just testing water, so to speak.

THE COURT: All right, you're going to go forward with some more questions of this witness.

(TR. 81) Q Now, Mr. Williams, at the time that you went to the plane --

MR. WYATT: Strike that.

Q (continuing) -- went to the area where the ticket takers were located did you see any signs that said that persons would be searched or anything like that? A. No, I did not.

Q Had you ever been to this particular airport or to LaGuardia before that time -- had you ever been there



before? A. Yes.

Q On any other occasions and you seen any signs that passengers boarding planes would be searched? A. No, I had not.

Q Now, other than the conversations that you have described between yourself and Officer Huttick did you have any other conversations with him prior to being handcuffed? A. Are you talking about this officer over here (indicating)?

Q This officer, here in the courtroom. A. No.

MR. WYATT: Nothing further of the witness.

(TR. 82) CROSS-EXAMINATION

BY LEVIN-EPSTEIN:

Q Mr. Williams, there is no question but that you were at LaGuardia on September 24, 1971; is that right?

A. That's right, yes.

Q And there is no question but that at 6:45 or thereabouts that morning you approached the TWA counter and purchased a ticket; is that correct? A. That is correct, yes.

Q And there is no question but that you were traveling along? A. Correct.

Q And there is no question that you paid for that ticket in cash? A. Yes.

Q And there is no question but that it was a one-way ticket; is that right? A. That's right.

Q I show you defense exhibit A and I ask you whether or not there is any question that this is the folder containing the ticket upon which you intended to travel. A. Yes, this looks like it.

Q No question about that, is there? A. No.

Q There is no question that when you approached the (TR. 83) gate in order to enter the airport and travel to Chicago that you were stopped? A. I didn't hear that.

Q I'm sorry. There is no question that when you approached the gate for this flight and entered the gate you were stopped? A. Yes.

Q And there is no question that you were stopped after going through the magnetometer? A. You are too fast. I can't understand your questions.

Q There is no question that you were stopped after passing through the magnetometer? A. Yes.

Q And you were told that the magnetometer reading was positive on you? A. No. At no time did anyone say anything to me.

Q Were you present during the testimony today of Police Officer Huttick? A. Yes.

Q Did you hear him testify that at the time he was a Deputy Marshal assigned to LaGuardia Airport? A. I certainly did.

Q And that he was at the boarding gate when you (TR. 84) were there? A. He was not.

Q He was lying? A. He was lying.

Q You heard him say that at this point he said to you, after passing through the magnetometer -- A. I heard everything he said.



Q And everything was a lie? A. That's right.

Q Not one bit of truth? A. Not much.

Q What was truthful? A. I can't recall anything he said as being the truth.

Q So everything was a lie? Nothing was truthful?  
A. Nothing.

Q Had you ever seen Agent Huttick before that day?  
A. No.

Q You never knew him before then? A. No.

Q Was Agent Huttick in uniform that day? A. No,  
he had on a blue suit.

Q So he wasn't in uniform? A. No.

(TR. 85) Q And the man from TWA had on a blue uniform?  
A. Yes.

Q What was his name? A. I don't know. I didn't ask him.

Q Did you object to being patted down? A. Yes.

Q What did you say? A. I told the man if he didn't want me to ride the plane without identification I would get a later flight.

Q Did you object to being patted down. A. Yes.

Q What did you say? A. I said I didn't want to be searched.

Q How many times did you go through the magnetometer? A. I think about three times.

Q Well, did you testify that you went through a

number of times, on your direct examination?

MR. WYATT: Objection. The record speaks for itself.

MR. LEVIN-EPSTEIN: Exactly, your Honor.

THE COURT: Well, I will sustain the objection.

A I did testify that I went through three times. The last time was on the way to the plane; once with the bag, (TR. 86) once without and then on the way back to the plane. That's three times.

MR. WYATT: I will withdraw the objection though your Honor sustained it. He has answered the question.

Would your Honor instruct --

THE COURT: On the way to the plane were you carrying the bag or was the man?

THE WITNESS: No, the man who started to talk to me took the bag from me.

Q Did he pass through the magnetometer carrying the bag? A. No, I did. He walked on the side.

Q So three times you walked through the magnetometer carrying the bag? A. I didn't say that.

THE COURT: He didn't say that, Mr. Levin-Epstein.

Q I am confused. You said you went through three times. How many times did you carry the bag? A. Once.

Q And twice without the bag? A. Going back through without the bag and then, "Come on through." Let (TR. 87) me say it again: Once through with the bag, once



through without the bag and he said, "Come on back through."

THE COURT: But he had the bag so you went through twice without the bag?

THE WITNESS: That's correct, sir.

Q And then after you went through with the bag what did this man from TWA say to you? A. Which time are you talking about?

Q After you went through with the bag. A. He said, "Go through by yourself."

Q That's all he said? A. Right.

Q What did he say after you went through by yourself a second time? A. He said, "O.K., come on."

Q What did that mean to you? A. Come on back through a third time.

Q And then what did he say to you? A. He didn't say anything. He waved for this man here (indicating).

Q That is when Officer Huttick appeared on the scene? A. He ran from near the plane back to where we were.

(TR. 88) Q From where? A. I could see the plane from where I was standing and the first time I saw him he was down near the plane, halfway down the ramp about 30 yards it looked to me -- 20 yards, anyway.

Q What is your testimony --

MR. LEVIN-EPSTEIN: Withdrawn. I have no further questions of the witness, your Honor.

MR. WYATT: I have nothing further.

THE COURT: You may step down.

MR. WYATT: The defendant rests, your Honor.

THE COURT: Will there be anything further?

MR. LEVIN-EPSTEIN: I have no further actual evidence to offer at this time on the motion to suppress.

The Government still rests on the motion.

MR. WYATT: And the defense rests and is ready for argument.



